IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2401 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATARIYABHAI BHIMABHAI RATHAVA

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/07/2000

ORAL JUDGEMENT

Petitioner's father Bhimabhai Rathava of village Kanpur (Navanagar) in Devgadh-Baria Taluka of Panch Mahals District was holding a licence for a single barrel muzzle load gun. As the petitioner's father was old and was not keeping good health, the petitioner deposited the gun at Rajgadh Police Station. The petitioner thereafter made an application to the Licencing Authority i.e. the Sub Divisional Magistrate, Dahod for issuing a licence in

favour of the petitioner in his personal capacity for holding the aforesaid gun. That application came to be rejected by the Licensing Authority by the impugned order dated 4.8.1992 (Annexure "A" to the petition). The petitioner, however, filed an appeal against the said order after a delay of 5 years and, therefore, the appellate authority rejected the appeal only on the ground of limitation. That order is communicated to the petitioner as per the communication dated 25.6.1997 at Annexure "D" to the petition. The petitioner has thereafter preferred a revision application before the State Government and the petitioner has not received any reply to the same. Therefore, the petitioner has filed the present petition.

2. In response to the notice, Mr KT Dave, learned AGP appears and states that no revision is maintainable against the appellate order of the Divisional Magistrate. Hence, the question of giving any direction to the State Government would not arise. Even so, considering the ground on which the petitioner's application was rejected by the Sub-Divisional Magistrate's order dated 4.8.1992 (Annexure "A"), it appears that the only ground which appealed to the Licensing Authority was that the petitioner had not produced the necessary evidence in support of his case. In this view of the matter, there cannot be any impediment to the petitioner being permitted to make another application for permitting the petitioner to hold a licence for the aforesaid gun.

3. If the petitioner makes such an application for license to hold a single barrel muzzle load gun before the Sub Divisional Magistrate within one month from today, the Sub Divisional Magistrate, Dahod shall consider the application as expeditiously as possible and preferably within two months from the date of receipt of the application.

It is clarified that since the petitioner's previous application was rejected only on the ground that the petitioner had not produced sufficient evidence, the Licensing Authority shall decide the application which may be presented hereafter without being influenced by the previous order dated 4.8.1992 or the order of the District Magistrate which was passed only on the ground of period of limitation.

4. The petition is disposed of in terms of the aforesaid directions. Rule is discharged.

July 27, 2000 (M.S. Shah, J.)

sundar/-